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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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JAY S. WALKER

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EXAMINER

ADAMS, CHARLES D

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/359,265	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> CHARLES D. ADAMS	<b>Art Unit</b> 2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 95-121 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 95-121 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Remarks***

1. In response to communications filed on 11 April 2008, claims 95-96 are amended and claims 112-121 are added per applicant's request. Claims 95-121 are pending in the application.

### ***Response to Arguments***

2. Applicant's arguments, filed 11 April 2009, with respect to the rejection(s) of claim(s) 95-107 under Keller et al. in view of Shimizu et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Keller et al. (US Pre-Grant Publication 2001/0053989) in view of Biffar (US Patent 6,397,212).

### ***Specification***

3. Claim 96 is objected to because of the following informalities:

The phrase "computer readable medium" does not appear in the specification. It is unclear what a "computer readable medium" entails.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 95, 97-110 and 112-121 are rejected under 35 U.S.C. 101

because the claims are directed towards a method, but a method is only patentable under 35 U.S.C. 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.

The use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. The involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity; and that the transformation must be central to the purpose of the claimed process.

As to claim 96, the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. A "computer-readable medium" is claimed. However, no recitation of the term "computer readable medium" appears in the specification, nor does any definition of what technology a "computer readable medium" entails. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d

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at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.

Compare *In re Lawry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994).

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make is statutory. See *Diehr*, 450 U.S. at 185-186, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

### ***Claim Rejections - 35 USC § 103***

6. Claims 95-107 and 111-121 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller et al. (US Pre-Grant Publication 2001/0053989) in view of Biffar (US Patent 6,397,212).

As to claim 95, Keller et al. teaches:

receiving from a customer a request to purchase a travel product, in which the travel product is associated with at last one variable component (see paragraph [0022]),

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and in which the request includes information about a first flexibility of the customer with respect to a first variable component of the at least one variable component (see paragraphs [0022]-[0023], the user may pick different degrees of departure and return flight flexibility);

determining at least one travel product based on the first flexibility of the customer, each at least one travel product having a respective first price (see paragraph [0022]. The user is trying to buy a “travel product” having a respective target price, or first price);

determining a score based on the first flexibility of the customer (see paragraph [0022]-[0023]. The user may choose flexible departure and return dates);

determining a minimum flexibility score (see paragraph [0022]-[0023]. The user may indicate no flexibility);

determining a maximum flexibility score(see paragraph [0022]-[0023]. The user may up to three days of flexibility);

Keller et al. does not explicitly teach determining a discount

Biffar et al. teaches determining a discount (see 14:5-27);

Keller et al. as modified teaches based on the score, the minimum flexibility score, and the maximum flexibility score (see Keller et al. paragraphs [0027]-[0030] and [0034] and Biffar 14:5-27));

determining a respective second price for each at least one travel product based on the respective first price and the discount (see Biffar 14:5-27 and Figure 9).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Keller et al. by the teachings of Biffar, since Biffar teaches "it is evident that the user can conduct trade-off analysis easily starting from any solution offered" (see 14:5-6).

As to claim 96, see the rejection to claim 95 above (Keller et al. paragraph [0020] refers to computer and server stations).

As to claim 97, Keller et al. as modified teaches in which the information about the first flexibility indicates a preferred travel product (see Keller et al. paragraphs [0022]-[0023]).

As to claim 98, Keller et al. as modified teaches in which the information about the first flexibility indicates a set of tolerances for the first variable component (see Keller et al. paragraphs [0022]-[0023]. The tolerances range from "not flexible" to "three days").

As to claim 99, Keller et al. as modified teaches in which the information about the first flexibility indicates a minimum value and a maximum value for the first variable component (see Keller et al. paragraphs [0022]-[0023]. The tolerances range from "not flexible" to "three days").

As to claim 100, Keller et al. as modified teaches in which the information about the first flexibility indicates at least one acceptable time (see Keller et al. paragraphs [0022]-[0023]. A range of dates may be chosen).

As to claim 101, Keller et al. as modified teaches in which the information about the first flexibility indicates at least one acceptable date (see Keller et al. paragraphs [0022]-[0023]. A range of dates may be chosen).

As to claim 102, Keller et al. as modified teaches in which the information about the first flexibility indicates a desired level of service (see paragraphs [0022]-[0023]. A user indicates a target price).

As to claim 103, Keller et al. as modified teaches in which the information about the first flexibility indicates an acceptable location assignment (see paragraph [0021]. Routes and carriers may be chosen).

As to claim 104, Keller et al. as modified teaches in which determining the at least one travel product comprises:

receiving information about a maximum price from the customer (see paragraph [0022]); and

identifying a respective first price that is not greater than the maximum price (see paragraph [0034]).



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As to claim 105, Keller et al. as modified teaches in which determining the at least one travel product comprises:

receiving information about a travel product that is preferred by the customer (see paragraph [0025]); and

identifying at least one travel product other than the travel product that is preferred by the customer (see paragraph [0025]).

As to claim 106, Keller et al. as modified teaches in which determining the at least one travel product comprises:

determining a set of travel products satisfying the first flexibility (see paragraph [0042]); and

selecting the at least one travel product at random from the set of travel products (see paragraph [0042]. Multiple “low fares” can be presented to a user. The fare selected by the user from this set of “low fares” can be considered randomly selected since no additional criteria are specified by the user after these low fares are presented.).

As to claim 107, Keller et al. as modified teaches in which determining the at least one travel product comprises:

selecting the at least one travel product based on revenue management information (see paragraph [0021]. The airline reservation information derives from either the SABRE or Apollo system and such systems include “rules and

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restrictions". These "rules and restrictions" are revenue management information").

As to claim 111, see the rejection for claim 1 above.

As to claim 112, Keller et al. teaches:

receiving from a customer a request to purchase an airline flight (see paragraph [0022]);

in which the request includes information about a first flexibility of the customer with respect to a first parameter associated with the flight (see paragraphs [0022]-[0023]);

in which the respective first parameter of each of the at least one flight is predetermined (see paragraphs [0022]-[0023]);

in which each flight is associated with a respective first price (see paragraph [0034]);

determining a first flexibility score associated with the first flexibility of the customer (see paragraphs [0022]-[0023]);

Keller et al. does not explicitly teach reducing at least one first price of a respective at least one flight to a second price based on the first flexibility.

Biffar teaches reducing at least one first price of a respective at least one flight to a second price based on the first flexibility (see 14:5-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Keller et al. by the teachings of

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Biffar, since Biffar teaches “it is evident that the user can conduct trade-off analysis easily starting from any solution offered” (see 14:5-6).

As to claim 113, Keller et al. as modified teaches wherein the at least one parameter is a time of departure of the flight (see Keller et al. paragraphs [0022]-[0023]).

As to claim 114, Keller et al. as modified teaches wherein the first parameter is a travel date (see Keller et al. paragraphs [0022]-[0023]).

As to claim 115, Keller et al. as modified teaches wherein the first parameter is a departure time (see Keller et al. paragraphs [0022]-[0023]).

As to claim 116, Keller et al. as modified teaches wherein the first parameter is a arrival time (see Keller et al. paragraphs [0022]-[0023]).

As to claim 117, Keller et al. as modified teaches wherein the first parameter is a departure location (see Biffar 14:5-27).

As to claim 118, Keller et al. as modified teaches wherein the first parameter is a arrival location (see Biffar 14:5-27).

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As to claim 119, Keller et al. as modified teaches wherein the first parameter is a number of stops (see Biffar 14:5-27).

As to claim 120, Keller et al. as modified teaches wherein the first parameter is a seat assignment (see Biffar Figure 9. Users may choose the class of their ticket).

As to claim 121, Keller et al. as modified teaches further comprising:  
determining a minimum flexibility score (see Keller et al. paragraphs [0022]-[0023]. Users may choose 'no flexibility');

determining a maximum flexibility score (see Keller et al. paragraphs [0022]-[0023]. Users may choose up to 3 days of flexibility);

in which reducing the at least one first price of the respective at least one flight to a second price is also based on the minimum flexibility score and the maximum flexibility score (see Keller et al. paragraphs [0022]-[0023] and Biffar 14:-27).

7. Claims 108-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller et al. (US Pre-Grant Publication 2001/0053989) in view of Biffar (US Patent 6,397,212), and further in view of Official Notice.

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As to claim 108, Keller et al. as modified does not explicitly teach providing a voucher to the customer to enable the purchase of one of the determined at least one travel product.

However, it is commonly practiced in to provide vouchers as promotions, or when flights are cancelled, that allow a customer to purchase travel products. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Keller et al. to include a voucher.

As to claim 109, Keller et al. as modified does not explicitly teach recording identifying information about the voucher.

However, it is commonly practiced in the art to, when giving a voucher to a customer, record information about the voucher to verify that it exists, who it was given to, and when it expires. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified Keller et al. to include storing information about a voucher.

8. Claims 110 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller et al. (US Pre-Grant Publication 2001/0053989) in view of Biffar (US Patent 6,397,212), and further in view Walker et al. (US Patent 6,134,524).

As to claim 10, Keller et al. as modified teaches the method of claim 95.

Keller et al. as modified does not teach further comprising:

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charging a penalty to the customer if the customer fails to purchase at least one of the determined at least one travel product.

Walker et al. teaches charging a penalty to the customer if the customer fails to purchase at least one of the determined at least one travel product (see 7:18-22).

Therefore, it would have been obvious to modify Keller et al. by the teachings of Walker et al., as a penalty will help offset the cost of providing a service to user, and would increase revenue. Walker et al. also teaches that “the cruise operators attempt to obtain maximum revenue for the sailing of each ship” (see 1:63-65).

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHARLES D. ADAMS whose telephone number is (571)272-3938. The examiner can normally be reached on 8:30 AM - 5:00 PM, M - F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. D. A./  
Examiner, Art Unit 2164

/Charles Rones/  
Supervisory Patent Examiner, Art Unit 2164